

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0247
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Harassment: failure to safeguard complainant's personal property
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	December 15, 2020

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by § 5-1107(a). This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

Complainant COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on January 16, 2020 alleging that, on January 13, 2020, the subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #2, harassed her by failing to safeguard her property after her arrest.

Specifically, COMPLAINANT stated that, on January 13, 2020, she was arrested by the subject officers at AN ADDRESS IN NE, WASHINGTON, DC, following a physical altercation between herself and residents at that address. COMPLAINANT had been temporarily living at the address. Following the altercation, the other resident threw her personal belongings outside onto the porch. These items included a Steve Madden brand duffel bag and a black, Tory Burch brand cross-body purse and additional personal items contained in each bag. COMPLAINANT alleged that the subject officers failed to safeguard her personal property after her arrest.

Complainant's purse and duffel bag were recovered several days later in an alley but were missing some personal items.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation including the body-worn camera footage, the objections submitted by the subject officers on September 30, 2020 and OPC's response to the objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the exhibits thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 13, 2020, Complainant was involved in an altercation at the home of a friend, located at AN ADDRESS IN NE, WASHINGTON, DC, COMPLAINANT had been staying with the friend and their family at the time of the fight. Police were called to the scene.
2. At some point following the altercation and before the police arrived on the scene, one of the residents of the home placed COMPLAINANT's personal property, including plastic garbage bags filled with clothing and other items and complainant's Steve Madden brand duffel bag outside of the house. During this time, complainant did an inventory of the bags, as well as her Tory Burch crossbody purse, which she was wearing at the time, and confirmed that she had her bank cards, cash and cell phone.
3. Subject officers SUBJECT OFFICER #1 and SUBJECT OFFICER #2 responded to the call and were the first to arrive on the scene, followed shortly thereafter by WITNESS OFFICER #1 and WITNESS OFFICER #2.
4. Following an investigation at the scene, WITNESS OFFICER #1 and WITNESS OFFICER #2 instructed SUBJECT OFFICER #1 and SUBJECT OFFICER #2 to arrest the complainant for assault. SUBJECT OFFICER #2 and WITNESS OFFICER #2 entered the residence to gather more information from the scene. SUBJECT OFFICER #1 volunteered to approach and arrest the complainant, who was then sitting on the front porch of the house.

5. As shown by the body worn camera (“BWC”) footage of the incident, as SUBJECT OFFICER #1 and WITNESS OFFICER #1 approached COMPLAINANT, they walked past the pile of garbage bags and the duffle bag containing complainant’s personal property on the ground. WITNESS OFFICER #1 turned to SUBJECT OFFICER #1 and brought the pile of property to his attention, stating, “This is gonna have to go with us. This is all her property.” SUBJECT OFFICER #1 responded, “Yeah we’ve gotta put all of her property on the book.” WITNESS OFFICER #1 then instructed SUBJECT OFFICER #1 to try to find one large bag to hold all of complainant’s property.
6. As other officers are escorting COMPLAINANT down the steps of the residence, SUBJECT OFFICER #1’s BWC footage clearly shows two officers helping complainant carry her personal property from the stairs of the residence to the sidewalk.
7. All of complainant’s property was placed on the sidewalk in front of the residence, at COMPLAINANT’s feet. SUBJECT OFFICER #1 then informed complainant that she was under arrest for assault and WITNESS OFFICER #3 instructed plaintiff to remove her Tory Burch purse.
8. COMPLAINANT complied, removing her purse and handing it to WITNESS OFFICER #3. As WITNESS OFFICER #1 explained the assault charge to complainant, COMPLAINANT noted that she was going to need her purse, to which he responded, “all your property will go to the station.”
9. WITNESS OFFICER #3 removed complainant’s passport, handed it to SUBJECT OFFICER #1 and then placed complainant’s purse on top of the pile at her feet. SUBJECT OFFICER #1 used complainant’s passport to complete paperwork related to the arrest and then handed it to WITNESS OFFICER #4, who placed it in the exterior pocket of complainant’s purse.
10. WITNESS OFFICER #5 then searched COMPLAINANT, removing multiple items from her pockets including white corded headphones, a SmarTrip card, and a gold glitter cell phone. WITNESS OFFICER #5 also removed a necklace from complainant’s neck and one earring, noting that complainant was missing the other earring. WITNESS OFFICER #5 placed all of the items taken from complainant in a clear property bag.
11. As shown on the BWC footage, SUBJECT OFFICER #1 took physical possession of the plastic bag.

12. Complainant was then led away from her pile of belongings and into a transport vehicle. BWC footage next shows SUBJECT OFFICER #2 exiting the residence and approaching SUBJECT OFFICER #1, who was standing on the sidewalk near the pile of the complainant's property. SUBJECT OFFICER #1 asked SUBJECT OFFICER #2 to complete the PD 313 form for the incident and SUBJECT OFFICER #2 complied, filling out the form on the hood of a police vehicle parked within feet of the pile of complainant's property.
13. WITNESS OFFICER #1 again asked the subject officers if they had a large bag to put all of the complainant's property inside. They remarked that they did not, and SUBJECT OFFICER #1 instructed them to bring the property with them to the station, "It's going to have to go with you guys." SUBJECT OFFICER #2 then told WITNESS OFFICER #1 that he would get a large trash bag for the property.
14. The BWC footage from the scene showed the subject officers completing the report and walking away from the scene, leaving complainant's property behind.
15. In his interview with OPC, SUBJECT OFFICER #1 admitted that he did not take the bags of clothes belonging to the complainant, or any of complainant's other personal property, with him when he left the scene. Sometime after he left the scene, he thought that COMPLAINANT's property might have been left on the sidewalk following her arrest and brought this to the attention of an officer on the midnight shift. That officer returned to the scene, found what items remained, and brought them to the police station.
16. Footage from the MPD DISTRICT STATION police station showed SUBJECT OFFICER #1 entering the property room at approximately 4:00 a.m. on January 14, carrying multiple plastic bags of complainant's clothing. He condensed the clothing into one bag and submitted it to the evidence control officer. SUBJECT OFFICER #1 was not, at that time, in possession of complainant's purse or duffel.
17. Later on the morning of January 14, COMPLAINANT was released and went to the MPD DISTRICT police station to recover her personal belongings. Complainant then discovered that some of her property was missing, including her purse, passport, cell phone and the duffel bag. Complainant reported the missing items to a female officer who traced the last known address of the phone as the residence where complainant had been arrested.
18. On January 15, 2020, an MPD officer was investigating an unrelated crime in the area of AN ADDRESS IN NE, WASHINGTON, DC, less than half a mile from the residence

where complainant was arrested, when approached by a city trash collector carrying complainant's Tory Burch purse. The trash collector informed the officer that he had found the purse in a trash can in a nearby alley. The officer removed complainant's passport from the purse, viewed her information, and then followed the trash collector to the alley where the purse was recovered where they also recovered the duffel bag in the same trash can.

19. In her interview with OPC, complainant stated that some of the items that had been in her purse and were never recovered included her cell phone, earphones, cash, bank and Cash App cards, jewelry and a pocketknife.
20. In his statement to OPC, SUBJECT OFFICER #1 described his role during the incident as the arresting officer and SUBJECT OFFICER #2's role as an assisting officer. SUBJECT OFFICER #1 told OPC that he is aware that MPD general orders require officers to safeguard property coming into their possession. He stated that it was his responsibility to safeguard the complainant's property during this incident.
21. In his statement to OPC, SUBJECT OFFICER #2 confirmed that he acted as an assisting officer in a supportive role while on the scene. SUBJECT OFFICER #2 further stated that he followed the directives given by the senior officers and supervisors on the scene.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority to adjudicate "a citizen complaint against a member or members of the MPD . . . that alleges abuse or misuse of police powers by such member or members, including "(1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public."

A. Harassment

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as "words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the

person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

MPD General Order 601.06 (effective April 30, 1992) Part 1 (A) (5) states, “Members shall ensure all property, which comes into their possession, is properly safeguarded until relieved of that responsibility.”

Based on the review of the BWC footage of the incident, as well as corroborating statements made by complainant and each of the subject officers, it is clear that the subject officers were aware of the trash bags containing complainant’s personal items, and that WITNESS OFFICER #1 had expressly directed SUBJECT OFFICER #1 to collect these items and transport them to the police station as part of the arrest. “This is gonna have to go with us. This is all her property,” WITNESS OFFICER #1 stated, to which SUBJECT OFFICER #1 responded, “Yeah we’ve gotta put all of her property on the book.”

BWC footage of the scene clearly shows that the trash bags were carried down the steps of the residence to the sidewalk by officers at the scene and placed at complainant’s feet. The footage further shows WITNESS OFFICER #3 instructing complainant to remove her purse and, when she expressed concern, reassuring her that, “all your property will go to the station.” Complainant’s passport was removed from her purse, but later returned to an exterior pocket. Some of COMPLAINANT’s other personal items, including a set of headphones, a SmarTrip card, and a gold glitter cell phone were removed from her purse and her person, again as shown in the BWC footage, and placed in a clear property bag. SUBJECT OFFICER #1 then took possession of the property bag, adding it to the pile of complainant’s possessions.

As he was leaving the scene, WITNESS OFFICER #1 again instructed the subject officers to bring the property with them to the station: "It's going to have to go with you guys." SUBJECT OFFICER #2 confirmed, telling WITNESS OFFICER #1 that he would get a large trash bag for the property.

The footage is clear that the subject officers were the last to leave the scene, failing to take complainant's personal property with them. Only hours later, after another officer was instructed to return to the scene and retrieve complainant's possessions, did SUBJECT OFFICER #1 log what remained of complainant's baggage into evidence.

While neither officer initially wanted to take responsibility for their failure to safeguard complainant's property, SUBJECT OFFICER #1 acknowledged that he was the arresting officer at the scene and that he left the scene without retrieving complainant's property. Although SUBJECT OFFICER #2 had only recently completed his officer training, as SUBJECT OFFICER #1's partner it was his duty to fully assist with any and all arrest-related tasks. Moreover, there is no doubt that the SENIOR OFFICERS on the scene instructed both officers at least twice to collect complainant's property and that they ultimately failed to comply with these orders. As a result of the subject officers' failures, COMPLAINANTs was permanently deprived of at least some of her personal property.

There is, therefore, reasonable cause to believe that the subject officers harassed complainant, in violation of D.C. Code § 5-1107 and MPD General Order 120.25, by at least recklessly failing to follow orders and MPD guidelines and safeguard her possessions during the course of her arrest, thereby resulting in the loss of her personal property.

[Remainder of Page Left Intentionally Blank]

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment: failure to safeguard complainant's personal property	Sustained
---	-----------

SUBJECT OFFICER #2

Allegation 1: Harassment: failure to safeguard complainant's personal property	Sustained
---	-----------

Submitted on December 15, 2020

Meaghan Hannan Davant
Complaint Examiner